

## **STATUS REPORT: CRIMINAL FINES**

Since the beginning of FY 1997, the Antitrust Division of the U.S. Department of Justice ("Division") has obtained over \$1.7 billion dollars in criminal fines -- many multiples higher than the sum total of all criminal fines imposed for violations of the Sherman Antitrust Act dating back to 1890. Well over 90 percent of these fines were imposed in connection with the prosecution of international cartel activity.

- **Volume Of Affected Commerce.** International cartels affect very large volumes of commerce. In some matters, the volume of commerce affected by the suspected conspiracy is well over \$1 billion per year and in over half of the investigations, the volume of commerce affected is well over \$100 million over the term of the conspiracy.
- **Corporate Fines Have Increased Dramatically.** Because international cartels affect such a large volume of U.S. commerce and the U.S. Sentencing Guidelines fines are based in large part on the amount of commerce affected by the cartel, fines obtained by the Division have increased dramatically in the last several years.
- **Year-End Total Fines.** In the 10 years prior to FY 1997, the Division obtained, on average, \$29 million in criminal fines annually. In FY 1997, the Division collected \$205 million in criminal fines - - which was 500 percent higher than during any previous year in the Division's history. In FY 1998, the Division obtained over \$265 million in criminal fines. In FY 1999, the Division secured over \$1.1 billion, including the record fines against F. Hoffmann-La Roche (\$500 million) and BASF (\$225 million). In FY 2000, the Division obtained over \$150 million in fines.
- **Higher Top-End Fines.** Six years ago, the largest corporate fine ever imposed for a single Sherman Act count was \$2 million. However, in the past five years, fines of \$10 million or more have become commonplace. The Division has obtained fines of \$100 million or more in six cases:
  - \$500 million against F. Hoffmann-La Roche (vitamin cartel - May 1999), largest fine ever imposed in a criminal prosecution of any kind;
  - \$225 million against BASF AG (vitamin cartel - May 1999);
  - \$135 million against SGL Carbon AG (graphite electrodes cartel - May 1999);
  - \$134 million against Mitsubishi corp. (graphite electrodes cartel - May 2001);
  - \$110 million against UCAR International (graphite electrodes cartel - April 1998); and
  - \$100 million against Archer Daniels Midland Company (lysine and citric acid cartels - October 1996).
- **International: Fines Of \$10 Million or More.** The Division has obtained fines of \$10 million or more against U.S., Dutch, German, Japanese, Belgian, Swiss, British, and Norwegian-based companies. In 28 of the 34 instances in which the Division has secured a fine of \$10 million or greater, the corporate defendants were foreign-based. These numbers reflect the fact that the typical international cartel likely consists of a U.S.

company and three or four of its competitors that are market leaders in Europe, Asia, and throughout the world. (See Chart of Sherman Act Violations Yielding a Fine of \$10 Million or More, Attached.)